

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

SHANNAN WHEELER; et al.,	§	
<i>Plaintiffs,</i>	§	
	§	NO. 4:17-CV-02960
vs.	§	
	§	JURY DEMANDED
ARKEMA FRANCE S.A., et al.	§	
<i>Defendants.</i>	§	

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CHRISTY GRAVES; ET AL.,	§	
<i>Plaintiffs,</i>	§	
	§	
DAVID BAECKER; ET AL.,	§	
<i>Intervenor Plaintiffs,</i>	§	
	§	NO. 4:17-CV-03068
vs.	§	
	§	JURY DEMANDED
ARKEMA INC.; RICHARD	§	
RENNARD; RICHARD P. ROWE;	§	
ANDREW BURDETT; and BUREAU	§	
VERITAS NORTH AMERICA, INC.,	§	
<i>Defendants.</i>	§	

**MOTION FOR INTRA-DIVISION TRANSFER OF RELATED CASE**

Defendant Arkema Inc. respectfully files this motion for intra-division transfer of a related case, and would show the Court as follows:

1. There are two related actions pending in the United States District Court for the Southern District of Texas (Houston Division) and these are identified in the style above:

- No. 4:17-cv-02960; *Shannan Wheeler, et al. vs. Arkema France S.A., et al.*, In the United States District Court, Southern District of Texas, Houston Division (Ellison, J.) (“*Wheeler*”).<sup>1</sup>

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<sup>1</sup> The only matter in which Arkema S.A. a defendant is the *Wheeler* case; however, Arkema S.A., has not been served in that case and has not appeared this. Arkema Inc. files this motion on behalf of itself only, and not on behalf of Arkema S.A.

- No. 4:17-cv-03068; *Christy Graves, et al. vs. Arkema Inc., et al.*, In the United States District Court, Southern District of Texas, Houston Division (Gilmore, J.) (“*Graves*”).

2. On October 24, 2017, Arkema Inc. filed a Notice of Related Litigation in both actions. *See* [*Wheeler* Docket No. 19]; [*Graves* Docket No. 5].

3. A Scheduling Conference was held in *Wheeler* on January 17, 2018 (no Docket No.), during which the Court suggested that Arkema Inc. file this motion.

4. Both the *Graves* and *Wheeler* actions arise out of the same events: three fires and a waste water release at the Arkema Inc. chemical plant in Crosby, Texas in the immediate aftermath of Hurricane Harvey. *See, e.g., Wheeler* First Amended Class Action Compliant (“*Wheeler* Compl.”) at ¶¶ 4 [*Wheeler* Docket No. 25]; *Graves* Second Amended Petition at ¶ 40 (“*Graves* Pet.”) [*Graves* Docket No. 1, Ex. B]; *Graves* Callahan Intervenors’ Complaint (“*Intervenors’* Compl.”) at ¶ 26 [*Graves* Docket No. 21].

5. *Wheeler* is a broadly defined putative class action that would include all of the *Graves* plaintiffs and intervenors:

Plaintiffs seek to represent the following Class of Individuals: All persons within seven miles of the Arkema facility in Crosby, Texas between August 29, 2017 and September 3, 2017 and/or who possessed a property interest in property located within 7 miles from the Arkema facility.

*Wheeler* Am. Cmpl. at ¶ 76.

6. Plaintiffs’ counsel in *Wheeler* represented to the Court, at the Scheduling Conference on January 17, 2018, that they individually represent approximately 900 plaintiffs, and that the putative class as currently defined totals approximately 10,000 persons. (No Docket entry).

7. There are 38 named plaintiffs and intervenors in *Graves*. [*Graves* Docket Nos. 1, Ex. B and No. 26].

8. Both the *Wheeler* and *Grave* actions allege injuries “to person and property” as a result of the fires. *Wheeler* Am. Compl. at ¶ 19, *Graves* Pet. at ¶ 39; Intervenor’s Compl. at ¶ 39.

9. Both actions also seek a temporary injunction against Arkema Inc. *Wheeler* Am. Compl. at ¶ 19, *Graves* Pet. at ¶¶ 58-61.

10. During the *Wheeler* Scheduling Conference on January 17th, the Court ordered the parties to submit briefing on their competing approaches to discovery. Both parties complied on January 23, 2018. [Docket Nos. 40-41.] Both parties will submit response briefs on Monday, January 29, 2018.

11. An Initial Pretrial and Scheduling Conference is set for February 16, 2018 in *Graves*. [Docket No. 2.]

12. Arkema Inc. respectfully submits that judicial economy would be served if these two actions proceeded before the same bench. Doing so would also eliminate the risk of inconsistent discovery and other pretrial rulings, which is Arkema’s principal concern.

13. Lastly, this motion does not seek consolidation of the *Wheeler* and *Graves* actions. Arkema Inc. only requests that they proceed before the same bench in this Court.

WHEREFORE, because the *Wheeler* action has the lower cause number, Arkema Inc. respectfully urges that *Graves* be transferred to Judge Ellison’s docket, where the *Wheeler* action is pending.

Respectfully submitted,  
K&L GATES LLP

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**CERTIFICATE OF CONFERENCE**

I certify that on January 26 and 30, 2018 I conferred with opposing counsel. Counsel for the *Wheeler* plaintiffs do not oppose to this motion. Counsel for the *Graves* plaintiffs and intervenors are opposed to this motion.

/s/ Michael L. Brem

Michael L. Brem

**CERTIFICATE OF SERVICE**

I certify that on January 30, 2018 I served a true and correct copy of the foregoing document upon all known counsel of record by the Court's ECF electronic filing service in compliance with FED. R. CIV. P. 5 and Local Rule 5.1.

/s/ Michael L. Brem

Michael L. Brem